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March 13, 2007

VIA E-FILING

The Honorable Gregory M. Sleet
United States District Court
Federal Building
844 North King Street
Wilmington, DE 19801

Re: *Merck & Co., Inc. v. Apotex, Inc.*
C.A. No. 06-230

Dear Judge Sleet:

The Court may recall that, in a teleconference on February 9, 2007, the Court addressed the issue of whether discovery should be stayed pending its ruling on Merck's motion to dismiss for lack of subject matter jurisdiction in view of Merck's covenant not to sue, and whether Merck was required to provide certain discovery sought by Apotex (interrogatories directed to contentions on the merits and certain depositions). At the end of the teleconference, the Court indicated that it was amenable to allowing the parties to attempt to develop, and get back to the Court with, a proposed procedure that would allow the Court to reach the merits of this case in the event it were to decide that there is subject matter jurisdiction and that would resolve the discovery issues.

The parties have been and are continuing productively to discuss a stipulation for a procedure and proposed judgment that would be entered if the Court were to decide that there is subject matter jurisdiction and that would obviate the need for further discovery. However, further time would be helpful and we ask that the Court allow us to March 20, 2007 to try to stipulate to a proposal for the Court. (The parties previously submitted a stipulation, D.I. 78, indicating that they were discussing a proposal and asking to have until March 13 to give a status report.) The attached stipulation and proposed order notes that the parties are discussing such a stipulation, and would give the parties to March 20, 2007 to report back to the Court. In asking the Court to give us the time, we note that opening letters addressing summary judgment motions are due May 9, 2007, so we expect to have the proposal resolved well in advance of that date.

The Honorable Gregory M. Sleet

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Respectfully,

/s/ Mary B. Graham

Mary B. Graham (#2256)

MBG/dam

Enclosure

cc: Louise Walsh, Esquire (via e-mail)
Richard L. Horwitz, Esquire (via e-mail)
Nicolas G. Barzoukas, Esquire
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MERCK & CO., INC.,)	
)	
Plaintiff,)	
v.)	C.A. No. 06-230 (GMS)
)	
APOTEX, INC.,)	
)	
Defendant.)	
_____)	

STIPULATION AND PROPOSED ORDER REGARDING EXPERT DISCOVERY

WHEREAS, it was discussed in the telephone conference with the Court on February 9, 2007, that Merck & Co., Inc. and Apotex, Inc. would attempt to stipulate to a proposed procedure that would allow the Court to reach the merits in the event it were to decide that there is subject matter jurisdiction;

WHEREAS the parties are continuing productively to discuss a stipulation for a procedure and proposed judgment that would be entered if the Court were to decide that there is subject matter jurisdiction and that would obviate the need for further discovery;

WHEREAS rebuttal expert reports were due on March 5, 2006; and

WHEREAS the parties would like to extend the date for rebuttal expert reports in light of the parties' attempt to reach a broader stipulation and because certain discovery was effectively stayed (including depositions) as discussed in the February 9, 2007 telephone conference;

NOW THEREFORE, IT IS HEREBY STIPULATED by the parties, subject to the approval of the Court, that:

1. The date by which rebuttal expert reports are due is stayed as of February 9, 2007 pending the parties' submission of a further stipulation for a proposal as noted above.

2. The parties will provide the Court with a written status report on or before March 20, 2007, at which time the parties will inform the Court whether they have been able to stipulate to a proposal.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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/s/ Mary B. Graham

/s/ Kenneth L. Dorsney

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Attorneys for Merck & Co., Inc.

Attorneys for Apotex, Inc.

Dated: March 13, 2007

SO ORDERED this ____ day of _____, 2007.

UNITED STATES DISTRICT JUDGE

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